

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF GEORGIA  
3                   ATLANTA DIVISION

4       IN RE: EQUIFAX, INC. CUSTOMER                   )  
5       DATA SECURITY BREACH LITIGATION                )  
6    ) Case No. 1:17-MD-2800-TWT  
7    )  
8    ) January 9, 2018  
9    ) 10:06 a.m.  
10   ) Atlanta, Georgia  
11       \_\_\_\_\_

12                   TRANSCRIPT OF THE STATUS CONFERENCE PROCEEDINGS  
13                   BEFORE THE HONORABLE THOMAS W. THRASH, JR.,  
14                   U.S. DISTRICT COURT JUDGE

15       APPEARANCES OF COUNSEL:

16       On behalf of the Plaintiffs:   Pitts Carr  
17   James Harrod  
18   Mike McGlamry  
19   Daniel Mirarchi  
20   Steve Susman  
21   David Worley  
22   Robert Magnanini (By phone)

23       On behalf of the Defendants:   David Balser  
24   John Gamble  
25   Stewart Haskins  
   Michael Smith  
   Richard Smith  
   Phyllis Sumner

*Proceedings recorded by mechanical stenography  
                  and computer-aided transcript produced by*

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1                   (Proceedings held January 9, 2018, Atlanta, Georgia,  
2   10:06 a.m., in open court.)

3                   THE COURT: All right. This is the case of In Re:  
4   Equifax, Inc. Customer Data Security Breach Litigation, Case  
5   Number 17-MD-2800.

6                   Needless to say, I'm not going to ask everybody  
7   representing the Plaintiffs to identify yourself for the  
8   record. If you think that there's a very high likelihood of  
9   speaking today during the conference, let me ask you to  
10   identify yourself by name and the parties you represent. If  
11   anybody else later decides you need to speak, that's fine.  
12   It's not going to stop you from speaking. I just don't want to  
13   take up 30 minutes having people tell me who they are and I'm  
14   not going to remember it anyway in all likelihood.

15                  So if you think you are going to speak on behalf of  
16   the Plaintiffs, state your name and who you represent.

17                  MR. WORLEY: David Worley for the Plaintiffs, Your  
18   Honor --

19                  THE COURT: Good morning, Mr. Worley.

20                  MR. WORLEY: -- of Evangelista Worley. Good morning,  
21   Your Honor.

22                  THE COURT: Thank you for setting up the telephone  
23   conference.

24                  MR. MIRARCHI: Dan Mirarchi, Your Honor, from Spector  
25   Roseman & Kodroff on behalf of Plaintiff Anthony Mirarchi.

1 THE COURT: Good morning, Mr. Mirarchi.

2 MR. CARR: Pitts Carr, Carr & Weatherby, Your Honor,  
3 for the Plaintiffs.

4 THE COURT: Good morning, Mr. Carr.

5 MR. SUSMAN: Steve Susman of Susman Godfrey for the  
6 Plaintiff class.

7 THE COURT: Good morning, Mr. Susman.

8 MR. SUSMAN: Thank you, Your Honor.

9 MR. McGLAMRY: Your Honor, Mike McGlamry of Pope  
10 McGlamry. I am here on behalf of seven credit unions.

11 THE COURT: Good morning, Mr. McGlamry.

12 MR. McGLAMRY: Thank you.

13 THE COURT: All right. I think that takes care of  
14 the Plaintiffs.

15 And the Defendants and parties you represent,  
16 Mr. Balser.

17 MR. BALSER: David Balser, King & Spalding, represent  
18 the Equifax Defendants. And with me is Ms. Sumner, Phyllis  
19 Sumner, and Stewart Haskins also of King & Spalding.

20 THE COURT: Good morning, counsel.

21 MR. SMITH: Your Honor, Michael Smith also from King  
22 & Spalding representing the company and two individuals in the  
23 securities cases.

24 THE COURT: Good morning, Mr. Smith, and welcome.

25 MR. HARROD: Your Honor, James Harrod from Bernstein

1 Litowitz Berger & Grossman for the Plaintiffs in these actions.

2 Thank you.

3 THE COURT: I'm sorry. Give me your name again, sir.

4 MR. HARROD: James Harrod. It's in the Kuhns case,  
5 Your Honor.

6 THE CLERK: He is in the other securities case,  
7 Judge.

8 THE COURT: Okay.

9 MR. HARROD: Thank you.

10 THE COURT: All right. There are others who are  
11 monitoring the conference by telephone. Let me instruct you if  
12 you are on the phone there's not to be any recording of this  
13 conference. And if any of you on the phone speak, please state  
14 your name before you start talking and restate your name every  
15 time that you speak so that my court reporter can get an  
16 accurate record of this proceeding.

17 A couple of housekeeping things first. The clerk's  
18 office has asked me to remind all of you that intend to  
19 participate in this case you need to register with CM/ECF, get  
20 a password, and that's the only way that you are going to be  
21 sure to get notified of things. We are not going to be serving  
22 orders or notices by mail. Everything is going to be put on  
23 the electronic docket, and that's the only way you are going to  
24 get notice of anything. So if you don't get -- don't register  
25 with CM/ECF and you don't get a password and you don't get

1 notice, it's going to be your fault, not ours.

2 Second thing is I'm happy to let you bring your cell  
3 phones and your laptops into court when we have these status  
4 conferences, but you need to present an order to me at least  
5 two days before the event.

6 THE CLERK: Business days, Judge.

7 THE COURT: She says business days. If you show up  
8 with an order, you know, at 9:00 the morning before we have a  
9 status conference or a hearing, it's going to be too late. You  
10 are not going to be able to get in with your phone and your  
11 laptop. So try to do that in advance.

12 I have received a number of ex parte preliminary  
13 reports from the Plaintiffs. Those have been very helpful to  
14 me in terms of educating me about the nature of the case. I  
15 received one ex parte confidential report from the Defendants,  
16 again, very helpful to me in educating me about the case. I  
17 don't think I need to invite you to make any kind of  
18 preliminary statement about the case this morning as a result  
19 of that; but if you want to, I will give you an opportunity to  
20 do so.

21 Those confidential ex parte reports have not been  
22 filed unless y'all filed them. We haven't. And they are not  
23 going to be filed. They are confidential. And I won't  
24 intentionally disclose anything that you said in there.

25 Having said that, Mr. Worley, Mr. Balser, do y'all

1 want to make any kind of statement about the case in general?

2 I will be glad to hear from you if you do.

3 MR. WORLEY: Not about the case in general, sir.

4 Just we will proceed with the procedure.

5 THE COURT: Mr. Balser?

6 MR. BALSER: No, Your Honor.

7 THE COURT: All right. Very good.

8 All right. I have got your proposed agenda, and my  
9 intention today is simply to just go through the items on your  
10 agenda. And if anything occurs to me along the way, I'll bring  
11 it up.

12 So the first item on the agenda is the status of  
13 filings and related actions.

14 Mr. Worley?

15 MR. WORLEY: Thank you, Your Honor. Good morning  
16 again.

17 THE COURT: We've got some chairs in the jury room if  
18 we -- are y'all comfortable back there? Do you want me to try  
19 to get some chairs for you?

20 THE CLERK: They seem to be okay.

21 THE COURT: I guess you're comfortable.

22 All right. Go ahead, Mr. Worley.

23 MR. WORLEY: Your Honor, I'm going to proceed through  
24 the agenda. First of all, the status of filings and related  
25 actions, there appear to be 355 actions have been filed in this

1 matter, 19 by financial -- or involved in financial institution  
2 claims by financial institutions, two small business Plaintiff  
3 cases and 334 consumer cases.

4 I then -- I wanted to inform the Court of the process  
5 that we've followed in accordance with your Case Management  
6 Order Number 1. The Plaintiffs had a general counsel-wide call  
7 on December 19th in order to come up with a process for  
8 responding to the items that you requested in your first Case  
9 Management Order. And yesterday -- or Friday we presented the  
10 preliminary report that was the result of those efforts from  
11 most people along with a list of pending motions.

12 Yesterday we filed a list of counsel that the Court  
13 had requested and a list of affiliated companies. In your CMO  
14 Number 1, you directed us to confer with defense counsel on a  
15 proposed discovery plan and a schedule for this action. And so  
16 on December 19th on our Plaintiff-wide call I invited every  
17 firm that had an intention of applying for leadership in this  
18 action to designate a representative to be in a position to  
19 confer with defense counsel about a second Case Management  
20 Order.

21 It became clear that given the number of firms that  
22 were interested in participating that it was impractical to  
23 hold an in-person meeting with Equifax's counsel, so the  
24 Plaintiffs' firms who were interested in leadership conferred.  
25 We drafted a Case Management Order Number 2. We circulated

1 that among those firms. We had a number of telephone  
2 conferences and e-mails, and we came up with the Plaintiffs'  
3 version of a proposed Case Management Order Number 2 which  
4 we've submitted to King & Spalding. We had a number of  
5 conversations with them and e-mails again, and we have come up  
6 with what we think is an appropriate Case Management Order  
7 Number 2 which we presented to the Court yesterday.

8 THE COURT: So that proposed order has been agreed  
9 upon by all of the Plaintiffs' lawyers that are seeking a  
10 leadership position and King & Spalding?

11 MR. WORLEY: That's -- yes, Your Honor, to my  
12 understanding. There may be some firms that later decide to  
13 seek a leadership position, but the ones that indicated since  
14 December 19th that they were interested participated in that  
15 process and are signatories to that Case Management Order.  
16 There are 64 Plaintiffs' firms on that order that we presented  
17 to the Court yesterday.

18 And with the Court's permission, since the Case  
19 Management Order -- or since the agenda tracks the Case  
20 Management Order, I'd just like to go through and highlight  
21 some of the things in the Case Management Order for the Court.

22 THE COURT: That's fine.

23 MR. WORLEY: Okay. First of all, it provides for  
24 separate tracks for consumer and financial institution actions.  
25 There was not a consensus among the Plaintiffs' counsel, the



1 consumer Plaintiffs' counsel, as to whether there should be a  
2 separate track for the two cases that were filed as small  
3 business cases, small business Plaintiffs. The counsel for  
4 those Plaintiffs has agreed to work with the appointed lead  
5 counsel for the consumer track and include those small business  
6 claims in any consolidated amended complaint, but the order  
7 that we submitted allows them if their claims are not included  
8 in the consolidated amended complaint to seek leave to  
9 establish a separate track. We have provided the Court a list  
10 -- lists as exhibits to the proposed Case Management Order of  
11 the three groups -- small business, consumer and financial  
12 institutions.

13 The order provides a schedule for filing a master  
14 consolidated complaint in each track that would -- we suggest  
15 to the Court that that should occur 60 days after lead counsel  
16 is appointed and in the case of the financial institutions 75  
17 days after lead counsel is appointed so that there will be  
18 separate timing of those tracks.

19 Rule 12(b) motions would be filed 45 days after the  
20 master consolidated complaint was filed. Oppositions to that  
21 by Plaintiffs would be filed 45 days later. And then, finally,  
22 Defendants' replies would be due 30 days after that. So in  
23 total, in each track it would be 180 days from the filing of  
24 the master consolidated complaint. The order provides for a  
25 consolidated caption and filing on a consolidated basis, and

1 the Court would administratively close individual cases after  
2 the master complaints are filed.

3 The order also provides a process for the appointment  
4 of leadership that leadership applications would be due to the  
5 Court on February 2nd. As far as our further discovery plan  
6 and scheduling order, it provides that within 30 days of  
7 appointment of leadership all the parties will meet and confer  
8 and present to the Court a proposed discovery plan under 26(f)  
9 and a suggested schedule under 16(b) for joinder of parties,  
10 consideration of class action allegations, motions and trial.

11 The order that we are submitting calls for status  
12 conferences approximately every six weeks and that we provide  
13 agendas two days in advance to the status conference.

14 The order also deals with further case management  
15 orders. It provides that 30 days after the appointment of  
16 leadership the parties will meet and confer for the purpose of  
17 agreeing upon further case management orders, including  
18 exchanging initial disclosures, amending the pleadings and  
19 other matters, a discovery protocol to govern discovery, an  
20 order on preservation of documents, an order on the handling of  
21 confidential documents and an ESI protocol.

22 The order also directs the parties to take reasonable  
23 steps to preserve documents in their possession -- this is  
24 paragraph 12 of the order -- and to meet and confer within 14  
25 days after the appointment of leadership to identify potential

1 third parties who may possess information.

2           There is a paragraph governing communications with  
3 putative class members. In accordance with the Court's local  
4 rule 23.1, the parties have begun conferring about whether  
5 there is a requirement for the entry of an order communicating  
6 -- governing communications with putative class members. The  
7 parties are agreeing to meet and confer on this issue, and we  
8 will provide the Court an update at the next status conference.  
9 Finally, the order provides in paragraph 15 for the creation of  
10 a website for the posting of Court orders in accordance in the  
11 case as is done in other cases in this district.

12           Those are the highlights and the major parts of the  
13 Case Management Order. Again, this is something that's been  
14 agreed to by the 64 Plaintiffs' firms and King & Spalding.

15           And then the other items that we have not put in the  
16 order that I think people would be interested in knowing the  
17 Court's position on is the preferred page limitations that the  
18 Court would like on leadership applications, whether the Court  
19 would like any kind of replies to the leadership applications  
20 and the Court's intention about having a hearing or not on the  
21 leadership applications.

22           With that, unless the Court has any questions, that's  
23 all I have on the Case Management Order.

24           THE COURT: Well, let me say that in general the  
25 proposed Case Management Order looks good to me.

1           Anybody else on the Plaintiffs' side want to speak on  
2   -- but I have some things to say about it as well. Anybody  
3   else want to speak on the Plaintiffs' side about the Case  
4   Management Order?

5           MR. MIRARCHI: I would like to, Your Honor.

6           THE COURT: All right.

7           MR. MAGNANINI: Your Honor, my name is Bob Magnanini  
8   from the law firm of Stone & Magnanini. We were only  
9   transferred into the case on Friday afternoon, so we have not  
10   had a chance to review CMO Number 2 or participate in the  
11   discussions. But we will check it out and get back to the  
12   Court after we have had a chance to review everything if that  
13   suits Your Honor.

14          THE COURT: Fine. If you will tell me your name  
15   again and the firm you are with.

16          MR. MAGNANINI: Yes, Your Honor. Robert Magnanini.  
17   It's M-a-g-n-a-n-i-n-i. It took me a while to learn. And the  
18   firm is Stone & Magnanini in New Jersey.

19          THE COURT: I'm still not sure we got that; so you  
20   call Ms. Sewell after this hearing is over and be sure we get  
21   your correct identification, sir.

22          All right. At the podium, please.

23          MR. MIRARCHI: Good morning. My name is Dan  
24   Mirarchi, M-i-r-a-r-c-h-i. I am with the firm of Spector  
25   Roseman & Kodroff. I am here to tell you that we represent a

1 Plaintiff who has a direct contract with Equifax. We haven't  
2 had an opportunity to review CMO Number 2 yet. We were not  
3 part of that process. And I'm sure it was an oversight with  
4 the number of claims and Plaintiffs here, Your Honor.

5 But our claims are different from the typical  
6 consumer case that we have before you; and I am here to speak  
7 -- am authorized actually to speak on behalf of three other  
8 firms that have similar claims, one of which is Stone &  
9 Magnanini who is on the phone. His name is Robert Magnanini.  
10 And I just -- I'm sure the question Your Honor is going to have  
11 for me is why are your cases different from the other consumer  
12 cases. We are going to have claims that arise from a direct  
13 agreement with Equifax that most of the consumers don't in this  
14 case. The damages will be different, and the claims will be  
15 different. So, and that is going to affect pretty much every  
16 aspect of the litigation from drafting pleadings to discovery  
17 to the defense of motions to dismiss and, if it gets that far,  
18 settlement negotiations and settlement itself, Your Honor.

19 We don't have -- so when we would be drafting the  
20 complaint, we would be dealing with the agreement with Equifax  
21 and our clients and Plaintiffs. The other consumers don't have  
22 to deal with that. It's going to be the material terms of  
23 those contracts, what was promised to our Plaintiffs. And also  
24 it's going to -- and then when motions to dismiss arise, we are  
25 going to have -- Defendants will have raised defenses that

1 won't necessarily affect us for the other consumers.

2 For instance, they will probably raise *Spokeo* dealing  
3 with concrete damages. Those are issues that may not affect us  
4 and also other infirmities that the consumer class might have  
5 that we don't. Obviously, they will raise different issues for  
6 us as well, Your Honor.

7 And then when we get to discovery if we get that far,  
8 there will be differences in what type of discovery as well;  
9 and you are going to have a class of 140 million Plaintiffs or  
10 so versus a much smaller class. And when you get into  
11 discovery like that, deals will have to be cut. Rule 26  
12 proportionality is going to come into play. And we just don't  
13 want our claimants, our Plaintiffs to be prejudiced by what  
14 kind of discovery will be taken.

15 For instance, in breach of contract claims, we can go  
16 back as far as six years. Also, a lot of our Plaintiffs and  
17 claimants are still paying for products and services for credit  
18 monitoring and identity theft protection post-breach which we  
19 will also have to take discovery on as well, Your Honor.

20 So the claims and the discovery and everything will  
21 be different, and we think that there should be a separate  
22 track for Plaintiffs who have contract -- direct contract  
23 claims with Equifax, Your Honor.

24 THE COURT: All right. Well, thank you,  
25 Mr. Mirarchi.

1 MR. MIRARCHI: Thank you, Your Honor.

2 THE COURT: Anybody else on the Plaintiffs' side want  
3 to be heard about the proposed Case Management Order Number 2?

4 Mr. Balser?

5 MR. BALSER: I'd like to respond, Your Honor, to what  
6 Mr. Mirarchi just addressed if I may.

7 MR. WORLEY: And I would too, Your Honor, when  
8 Mr. Balser is done.

9 THE COURT: Well, why don't you go first, Mr. Worley,  
10 and then I will hear from Mr. Balser.

11 MR. WORLEY: Very briefly, Your Honor.

12 Many of the issues that Mr. Mirarchi raised were  
13 considered by the Plaintiffs in considering whether to have a  
14 small business track, and we came to the conclusion -- and I  
15 think it's the consensus of the group -- that those issues are  
16 best left to the determination of the lead counsel. They can  
17 be included in the consolidated complaint, and we can establish  
18 a class for those people with class -- you know,  
19 representatives of those people. No one is going to want to  
20 harm the claims of anyone. And the general consensus was that  
21 it was more appropriate to deal with those issues after  
22 leadership was appointed.

23 THE COURT: Mr. Balser ?

24 MR. BALSER: Thank you, Your Honor. David Balser of  
25 King & Spalding on behalf of Equifax.

1           Mr. Mirarchi filed a complaint in this court. His  
2       named Plaintiff is Mr. Anthony Mirarchi. He filed the  
3       complaint on November 15th, 2017. These claims that he asserts  
4       in this complaint dovetail and overlap significantly with the  
5       consumer claims asserted in the various complaints filed by  
6       other consumer Plaintiffs, and we would strenuously urge the  
7       Court to not create a separate track for this one case.

8           Interestingly, although they did tack on a breach of  
9       contract case to their complaint, the first count of the  
10      complaint is for breach of fiduciary duty. The second count is  
11      for negligence. The third count is for negligence per se.  
12      They also raise claims for willful violation of the FCRA and  
13      negligent violation of the FCRA as well as Fair Business  
14      Practice Act claims, all of which are claims that are asserted  
15      in the myriad consumer cases that have been filed.

16           So these claims all arise out of the same set of  
17      events. If you look at paragraph 110 of Mr. Mirarchi's  
18      complaint in which he argues that there's commonality  
19      sufficient to meet the prerequisites of Rule 23, he claims that  
20      the critical questions of common law, in fact, include whether  
21      Equifax had a duty to protect PII, whether Equifax should have  
22      known of the susceptibility of their data security systems to  
23      data breach and on and on and on about negligence-based claims.

24           So, Your Honor, while there is one separate claim  
25      asserted in Mr. Mirarchi's complaint, the vast, overwhelming



1 factual allegations in the numerous other counts in the  
2 complaint overlap significantly with the consumer claims and  
3 they ought to be treated as part of the consumer track.

4 MR. MIRARCHI: Your Honor, may I just respond to that  
5 quickly?

6 THE COURT: Briefly, yes, sir. Come on up to the  
7 podium.

8 MR. MIRARCHI: I will be brief, Your Honor.

9 What was mentioned about the complaint, that was an  
10 initial complaint. Obviously, our amended complaint would be  
11 different. Just because commonality -- we all -- all these  
12 claims emanate from the data breach. This is very similar to  
13 what happened in the *BP* case, Your Honor, down in the Southern  
14 District of Texas before Judge Ellison. It all arise from --  
15 all the claims arise from an explosion aboard the *Deepwater*  
16 *Horizon*. There, there were different class periods. All of  
17 the commonality of the issues were the same, and that's why  
18 they were able to proceed to class. But adequacy of  
19 representation and typicality were different.

20 That's what's different here, Your Honor. Our claims  
21 will be different. They will be dealing with breach of  
22 contract; and the damages also will be different as well, Your  
23 Honor. So because the initial complaint has overlap with the  
24 larger consumer class, it doesn't mean that our clients would  
25 not be prejudiced if they weren't given a separate track.

1 Thank you, Your Honor.

2 THE COURT: All right. Well, I'm at this time going  
3 to agree and proceed with the proposed Case Management Order  
4 Number 2 and establish separate tracks for the consumer and  
5 financial institution actions. I'm not going to establish a  
6 separate track for Mr. Mirarchi's case or any other cases  
7 asserting a breach of contract claim. I think there's  
8 sufficient overlap with the other consumer cases that a  
9 separate track is not required. The breach of contract claims  
10 can be asserted in any master complaint that's filed, and any  
11 issues that relate to class certification can be dealt with  
12 later at the class certification stage.

13 And this decision -- I can always revisit this issue  
14 if it becomes a problem, but I'm just not persuaded at this  
15 stage that there would be any prejudice to Mr. Mirarchi's  
16 clients by including them in the consumer track.

17 So any other general comments about the proposed Case  
18 Management Order Number 2?

19 (No response.)

20 Well, then let's talk about the leadership on the  
21 Plaintiffs' side. Typically, in cases like this, what I've  
22 done is appoint lead counsel for the Plaintiffs, liaison  
23 counsel who has to be local and then a steering committee for  
24 the Plaintiffs. So what I would suggest is that we have lead  
25 counsel, liaison counsel and a steering committee for each of

1 the two tracks, for the consumer and financial institution  
2 actions.

3 Now, the securities fraud cases are going to be  
4 different; and we will talk about them later. But for the  
5 consumer and the financial institutions, that's what I would  
6 anticipate doing.

7 I'm open to suggestions about that. I don't have any  
8 rigid pre-conditions or notions about that. But you're not  
9 going to find me very receptive to a steering committee that is  
10 so large in an effort to accommodate everybody that wants to  
11 have a leadership position that it's unworkable. So a steering  
12 committee is to exercise overall supervision and speak for the  
13 Plaintiffs who are not in a lead counsel or liaison position.  
14 It's not to be so enormous that everybody's in it. Then that  
15 totally defeats the purpose of having a steering committee.

16 Mr. Carr, you want to say something?

17 MR. CARR: Yes, Your Honor. Pitts Carr --

18 THE COURT: Come on up to the podium, please,  
19 Mr. Carr, so everybody can hear you.

20 MR. CARR: Pitts Carr of Carr and Weatherby.

21 I would like to introduce Your Honor to Mr. Stephen  
22 Susman who I'm sure you know by representation, but he has some  
23 thoughts that he has presented to me that I think might be of  
24 help and at least something the Court should consider.

25 I turn it over to Mr. Susman. Thank you, Your Honor.

1 MR. SUSMAN: Thank you, Your Honor. Steve Susman.

2 Just some suggestions on how you might do it, Your  
3 Honor. We're all supposed to file our applications for either  
4 lead counsel, steering committee or liaison counsel by February  
5 2nd. My hunch is you're going to get a lot of paper on  
6 February 2nd from a lot of people.

7 THE COURT: Well, we are going to talk about that  
8 too.

9 MR. SUSMAN: Well, let me just give you an idea that  
10 might help Your Honor. I suspect that if you make it clear  
11 that your lead counsel, however many you choose to appoint,  
12 your co-lead, you are appointing individuals, not law firms.  
13 The individual is the lead counsel. He is the one who you  
14 trust to be -- he or she to be here to make the presentations,  
15 to manage the case, to assign the work and represent the class.

16 And you are essentially in the position obviously of  
17 hiring lawyers for millions and millions of people in this  
18 country, probably the biggest legal contract that will ever be  
19 entered into in this country. And you contract on the front  
20 end, not on the back end. As lawyers who do contingent-fee  
21 litigation know all the time, you make a contract at the  
22 beginning of the case, what the fee is going to be, who the  
23 lead lawyer is going to be. And everyone hires lawyers, not  
24 law firms. So point one is that it should be individuals who  
25 commit to be involved.

1           Once you find out which individuals among this group  
2     want to take that responsibility on of being present for the  
3     meetings of the Plaintiffs' steering committee, of being  
4     present in court, then you choose among them. And I would also  
5     make those applicants, Your Honor, disclose relationships that  
6     they have with any other applicants for lead counsel -- do you  
7     have some sharing arrangement, are you already in a group -- so  
8     you know whether you are appointing -- for example, selecting  
9     jurors who work for the same employer, that's one thing that  
10    lawyers, trial lawyers want to know. And a trial judge should  
11    I think ask that question in appointing lead counsel, do you  
12    have a relationship or have you talked to or do you have any  
13    deal-cutting with another applicant.

14           Once you -- and my hunch is that you are going to be  
15    not a lot of applications, maybe ten for that position under  
16    those circumstances. That's -- and then I would suggest you  
17    select the lead counsel that you want, however many you want.  
18    I'm not suggesting how many, whether it should be one, three or  
19    ten. That's up to you.

20           THE COURT: Not going to be ten.

21           MR. SUSMAN: I understand. Well, you know, three is  
22    a good number because your ties are broken obviously.

23           But in any event, let's assume -- and then you assign  
24    to those people who you have selected to be the leaders in the  
25    case the job of reviewing the applications from the dozens that

1 will apply for the PSC position and let them come to you in two  
2 weeks after they are selected and give you recommendations as  
3 to the size of the PSC and who should be on it. And obviously  
4 not binding on you, but it seems to me that that's kind of a  
5 sensible way of doing it, kind of in a phased way, totally  
6 consistent with what's in Case Management Order 2 that we all  
7 have to apply by February 2nd. And we all have to put our --  
8 comply with what Rule 23 requires and this Court's order  
9 requires you put in your application but that if you express  
10 the view -- if you agree with my suggestion that co-leads  
11 should be individual lawyers and they should -- an effort  
12 should be made to have independent individual lawyers, that is,  
13 you are going to get the views when you get the recommendations  
14 for the composition of the Plaintiffs' steering committee from  
15 three, four or however many lawyers you have decided to entrust  
16 with the top position in the case. You will get their  
17 independent views of who can best help bring this case to a  
18 successful conclusion for the class.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Susman.

21 Anybody else want to be heard on this issue of the  
22 composition of Plaintiffs' leadership?

23 And I will tell you that I'm not expecting Plaintiffs  
24 to agree on the leadership. And assuming that you don't, my  
25 intention would be probably after reviewing the initial

1 applications to have a hearing where I can ask individual  
2 questions of individual applicants, some of which might be on  
3 topics that Mr. Susman has discussed, others not. But that  
4 would be my probable way of proceeding.

5 So what's a reasonable page limit for applications,  
6 double-spaced, 14-point font, Mr. Worley?

7 MR. WORLEY: Well, in *Home Depot*, I recall, Your  
8 Honor, that you set a page limit of 25 pages and then a 50-page  
9 limit for additional material which I think was more --  
10 observed more in the breach than actually in the -- in  
11 following through. But I -- personally I think that 25 pages  
12 is sufficient.

13 THE COURT: 25-page limit for applications,  
14 double-spaced, 14-point font, no fudging with single-spaced  
15 footnotes or bulletpoints and a limit of 50 pages on any  
16 attached materials.

17 That suit everybody?

18 Okay. And I don't really see any reason for replies  
19 because if there's a contest I'm going to have a hearing, and I  
20 will hear what anybody has to say. The applications are to be  
21 filed on the public docket. These are not *ex parte*. They are  
22 not confidential. They are to be filed on the public docket,  
23 so everybody is going to know what everybody else had to say.

24 Mr. Balser, you want to say anything about the  
25 Plaintiffs' leadership structure or any suggestions as to

1     qualities that I ought to be looking for in terms of appointing  
2     Plaintiffs' leadership?

3             MR. BALSER: I think I'm going to resist the  
4     temptation, Your Honor.

5             THE COURT: Probably a good idea, Mr. Balser.

6             Any other comments or suggestions about Plaintiffs'  
7     leadership structure?

8             (No response.)

9             All right. I'm going to sign the proposed Case  
10    Management Order Number 2. I think it's well done, gets us off  
11    to a good start. And if anybody that wasn't part of the  
12    process of negotiating it has some problem with it later, we  
13    can address it at the next status conference. But I think this  
14    gets us off to a good start, all things considered.

15            So the securities fraud case, Mr. Smith, I understand  
16    you don't want to be in the MDL?

17            MR. SMITH: Your Honor, Michael Smith from King &  
18    Spalding for Equifax, Richard Smith and John Gamble.

19            It looks like a lot of fun, but I think we would like  
20    to be off to the side. There's no reason to include the  
21    securities cases in the MDL. The transfer order did not  
22    include them in the MDL. The transfer order specifically says  
23    that it applies to consumer actions.

24            This is an entirely different case with different  
25    focus. It's going to focus on false and misleading statements



1 allegedly that preceded the breach. We all know that there was  
2 the data breach. This case is going to have a different focus,  
3 and there are different requirements under the PSLRA. And  
4 there's just no reason to include the securities cases in with  
5 the consumer cases. To the extent there is any need for  
6 coordination, to the extent there is overlap, that can be  
7 handled separately between Your Honor -- Your Honor and Judge  
8 Duffey depending on how that shakes out.

9 Just to remind Your Honor, there are two securities  
10 cases, one of which the Case Management Order, the Kuhns case,  
11 was entered -- this consumer MDL Case Management Order was  
12 entered in the Kuhns case but not in the separate Groover case  
13 that is pending before Judge Duffey. There have been motions  
14 made to consolidate those two cases, but we don't believe there  
15 are any efficiencies to be realized from including the  
16 securities cases in with the consumer MDL.

17 THE COURT: Thank you, Mr. Smith.

18 Mr. Mixson or --

19 MR. MIXSON: I will let him talk.

20 MR. HARROD: Your Honor, thank you. James Harrod  
21 from Bernstein Litowitz Berger & Grossman.

22 I think there may be a misapprehension or some  
23 confusion about what it is that we are asking for because the  
24 Defendants have asked for the securities cases to be treated  
25 separately. I'm not really sure what that means because what

1 we believe is that they ought to be centralized with the MDL as  
2 there are many examples of securities cases proceeding  
3 alongside other kinds of consumer or other contract cases. We  
4 believe there's clearly relatedness and efficiencies that will  
5 come from that; and anything that would be inefficient about  
6 that can be handled through Your Honor and through, I think,  
7 experienced counsel recognizing that there are case management  
8 solutions to most of those things.

9           What I have not heard from the Defendants is what the  
10 harm would be in coordination. They talked about there's a  
11 PSLRA, the Plaintiff appointment process. Your Honor, our  
12 client is Union Asset Management Holding. The motion is not  
13 opposed at this point. There is no other movant, and so that  
14 process is effectively if not as a matter of recordkeeping  
15 completed.

16           There's a stay of discovery in the cases. As I  
17 understand, CMO 2 in the MDL cases there will be a stay of  
18 discovery pending the outcome of a motion to dismiss. So there  
19 is no procedural obstacle to coordination of these cases in  
20 some way.

21           Mr. Smith said that there are -- there's a  
22 distinction in the cases about the securities cases looking  
23 backward at statements that were made in a class period before  
24 the data breach. That's, of course, true. The underlying  
25 facts in these cases are very much the same.

1           One of the allegations that we are going to make just  
2   for an example is what did Equifax do to protect the consumer  
3   data that was the subject of the data breach. And I believe in  
4   the consumer actions that's going to be the same question, what  
5   was Equifax's duty to protect that data. In the securities  
6   cases, it will be what did they say about how they were  
7   discharging that duty. But the evidence, the documents, the  
8   custodians of those documents and the witnesses are likely to  
9   be the same. And in our view, there's no reason why a separate  
10  judge should proceed along a parallel track, learn what are  
11  likely to be very complicated and voluminous facts to  
12  effectuate a remedy which I don't think serves to solve any  
13  problem or at least not one that I have seen identified.

14           So, Your Honor, we'd ask respectfully that you allow  
15  the cases to proceed on a centralized basis which, you know, we  
16  provided in the letter we, I think, submitted on December 28th,  
17  many examples of MDLs that have taken this approach. We have  
18  proposed some case management techniques that we think will  
19  allow that to happen. And, most importantly, I think it would  
20  create efficiencies mostly for the Court but also for the  
21  parties to be forced to at some point -- and it's a very early  
22  stage in both of these cases -- to be coordinated.

23           And I see -- and like I said before, I don't want to  
24  belabor the point. I know there's many lawyers here waiting  
25  patiently. But I see no injury.

1           So we would ask first that Your Honor sign the order  
2     appointing Union Asset Management Holding as the lead  
3     Plaintiff. There's a motion for consolidation in which the  
4     Kuhns case which has been assigned to Your Honor which has been  
5     subject to CMO 1 in the MDL be consolidated with the other case  
6     that's currently assigned to Judge Duffey. Our understanding  
7     of this is that it's simply an administrative issue where one  
8     was tagged because it's agreed by everyone, the Plaintiffs and  
9     the Defendants in both of these cases, that Groover which is  
10    not the low-numbered case be consolidated into Kuhns under a  
11    new caption.

12           And I disagree with Mr. Smith, and I don't want to  
13    get into the details of this. I don't think the MDL did not  
14    transfer our case as part of the MDL transfer order. Because  
15    it was already in this district, it would have been subject to  
16    the tagalong process through a conditional transfer order; but  
17    it wasn't because it wasn't originally named in the motion to  
18    transfer cases. So as a subsequent tagalong, it's not subject  
19    to the original transfer order. So there's nothing in that one  
20    class of consumer actions that precludes Your Honor from  
21    centralizing the securities case with the MDL and to exercise  
22    appropriate case management techniques to allow that to proceed  
23    I think in an efficient way.

24           Is there anything else that you'd like to hear from  
25    me?

1 THE COURT: No, sir.

2 MR. HARROD: Thank you, Your Honor.

3 MR. SMITH: Your Honor, just a brief response.

4 THE COURT: Briefly, Mr. Smith.

5 MR. SMITH: Yes.

6 So, again, the MDL order did not transfer the  
7 securities cases. It was not listed among those actions. It  
8 clearly said it focused on consumer class actions.

9 You will recall that Your Honor entered an order  
10 inadvertently staying the securities actions along with the  
11 other consumer actions pending the MDL's ruling. We brought  
12 that to the Court's attention. The Court entered an order  
13 saying that that stay order as to the securities cases was  
14 inadvertently entered. So they are very different.

15 The PSLRA, we already have deadlines for the  
16 appointment of a lead Plaintiff. There's no reason to wait.  
17 Mr. Harrod has already acknowledged there are no other  
18 applicants. That case is ready to go. A lead Plaintiff is  
19 ready to be appointed. An amended complaint will be filed. It  
20 will be the subject of no doubt a motion to dismiss on these  
21 entirely different issues about the class period statements  
22 that occurred well before the breach.

23 And, finally, we have had mentioned here today, for  
24 example, the BP oil spill. In that case -- and we cited this  
25 to Your Honor in our papers -- the court did not include the

1 securities cases in the MDL, saw no efficiencies, pointed out  
2 all the differences between the cases. We think the same is  
3 here. To the extent there can be any needed coordination, that  
4 can occur outside of including the securities cases in all of  
5 these hearings and all of these unrelated proceedings.

6 Thank you, Your Honor.

7 MR. HARROD: Your Honor, can I just very briefly?  
8 I'm sorry.

9 THE COURT: This is it.

10 MR. HARROD: Okay. I understand.

11 I don't think -- we don't need to participate in  
12 every hearing in the MDL. We just want there to be some  
13 centralization. We don't need to be part of the master MDL  
14 docket.

15 And on the *BP* case, the securities case there was  
16 really much different. I think this is much similar to what  
17 Your Honor did in *Home Depot* as I understand it where you  
18 centralized shareholder derivative cases and consumer data  
19 breach cases. And I think that that's a better analog.

20 I'm working on the *Volkswagon* securities litigation  
21 which is proceeding as part of the MDL next to the consumer  
22 cases. We are not part of every MDL hearing in that case.  
23 Judge Breyer calls us in when he needs to see us, and he  
24 manages the case that way. So I see that there's no reason not  
25 to centralize the case and apply appropriate case management

1 techniques.

2 Thank you. I appreciate the courtesy.

3 THE COURT: Well, I think one judge ought to be  
4 handling both the MDL case and the two securities cases. One  
5 of the securities cases has already been transferred to me, and  
6 I'm going to talk to Judge Duffey about the other one.  
7 Assuming that there's no difference of opinion between me and  
8 Judge Duffey, I anticipate that Judge Duffey's case will  
9 probably be transferred to me. And my intention is that the  
10 MDL proceeding and the securities cases will be coordinated.

11 The securities case, assuming that the motion to  
12 consolidate is granted and it's before me, won't be technically  
13 part of the MDL; but it's going to be coordinated with the MDL  
14 in terms of discovery, in terms of procedure, in terms of  
15 status conferences as if it was part of the MDL. But the cases  
16 will remain open unlike the other individual cases in the MDL,  
17 and they will have continued existence. And I suppose they  
18 need their own Case Management Order which to my way of  
19 thinking should be virtually identical to Case Management Order  
20 Number 2 in the MDL with whatever differences need to take into  
21 account the PSLRA and anything that is currently pending.

22 But, Mr. Smith, you and Plaintiffs' counsel confer  
23 about that. And I hope to have some resolution of what happens  
24 to the Groover case today. You should know today. And I think  
25 there is a very high probability that that's going to be

1 transferred to me, Mr. Smith.

2 MR. SMITH: We understand, Your Honor. We have had  
3 meet-and-confers with Plaintiffs' counsel about a Case  
4 Management Order. I think we don't have complete agreement on  
5 certain deadlines in there, but I think we could submit  
6 something even if it's dueling orders on some timing issues  
7 with respect to the filing of an amended complaint and going  
8 through the motion to dismiss process. But we could submit  
9 that to you very quickly.

10 THE COURT: Fine. So you're going to be with us,  
11 Mr. Smith.

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: So I will, as I typically do in these big  
14 cases, have status conferences every four to six weeks. I  
15 don't think there's any point in having the next status  
16 conference until the issue of Plaintiffs' leadership has been  
17 resolved. So my thinking would be we won't schedule another  
18 one today, but I would expect to have one within a couple of  
19 weeks after the Plaintiffs' leadership structure has been  
20 established.

21 What do you think about that, Mr. Worley? Any  
22 suggestions?

23 MR. WORLEY: I would agree that there's not much  
24 point until leadership is appointed, and we can very quickly or  
25 the leadership can very quickly get with the Court and schedule



1 a hearing at that point.

2 THE COURT: What do you think, Mr. Balser?

3 MR. BALSER: I agree, Your Honor.

4 THE COURT: All right. Once the Plaintiffs'  
5 leadership has been established, all Plaintiffs' counsel who  
6 work on the case will be required to keep time records of your  
7 time. And mindful of that, there will be no more mass meetings  
8 of Plaintiffs' counsel. Status conferences will be for defense  
9 counsel and Plaintiffs' leadership, not mass meetings of  
10 everyone who is involved.

11 And there will be no time logged for people just  
12 monitoring status conferences by phone. So I'll expect there  
13 to be clear understandings between Plaintiffs' leadership and  
14 everybody else that's working on the case about no padding of  
15 time and no unnecessary time being racked up just trying to  
16 enhance positions when the time comes if it comes for fees to  
17 be an issue.

18 Understood, Mr. Worley?

19 MR. WORLEY: I have never had any problem with that,  
20 Your Honor, as you know from *Home Depot*. Thank you. I think  
21 everyone understands that.

22 THE COURT: All right. So I think we've covered the  
23 items on the agenda and my mental agenda. I hope this is not  
24 going to be too painful for everybody, including me. And I'm  
25 confident if we work together we can avoid as much pain and

1       discomfort as possible.

2               Anybody else want to talk about anything?

3               (No response.)

4               All right. I understand that Plaintiffs' counsel  
5       want to meet in the ceremonial courtroom. We have got it  
6       reserved for you. It's open. There's no telephone capability  
7       up there. If you want to stay here and use my courtroom and  
8       keep the phone open, that's fine.

9               I think you will all be more comfortable up in the  
10      ceremonial courtroom where everybody can have a seat, but  
11      that's up to you. It's on the 23rd floor. You are welcome to  
12      use it if you want to. It's reserved for you.

13              And unless anybody has anything else, that'll  
14      conclude our first status conference on the Equifax MDL.

15              MR. WORLEY: Thank you, Your Honor.

16              THE COURT: Thank you very much. Court's in recess  
17      until further order.

18              (Proceedings adjourned at 11:05 a.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT:

NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 34, are a true and correct copy of the proceedings in the case aforesaid.

This the 11th day of January, 2018.

/s/ Susan C. Baker \_\_\_\_\_

Susan C. Baker, RMR, CRR  
Official Court Reporter  
United States District Court